THE HON'BLE SRI JUSTICE B. PRAKSH RAO
AND
THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT APPEAL No.1767 OF 2004

Date: .11.2006

Between:

District Collector/Person Incharge,
The Karimnagar District Cooperative
Central Bank Ltd., Karimnagar & another.

… Appellants

AND

R. Chinna Peddanna

… Respondent

THE HON'BLE SRI JUSTICE B. PRAKSH RAO
AND
THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT APPEAL No.1767 OF 2004

JUDGMENT:- **(PER C.V.NAGARJUNA REDDY, J)**

The order of the learned Single Judge passed in W.P.No.17982 of 2004 dated 14.10.2004 is assailed in this writ appeal.

The respondent was an employee of the Karimnagar District Cooperative Central Bank Limited, Karimnagar. At the relevant time, the respondent, who was working as a supervisor, was entrusted with the duty of In-charge Cashier. On 30.09.2003, a theft in the branch in which the respondent was working has taken place in which an amount of Rs.4,00,000/- was stolen from the said branch. According to the respondent, the then Branch Manger confessed that he himself was responsible for the theft and accordingly he remitted a sum of Rs.2,50,000/-, the then cashier paid Rs.20,000/- and the attender remitted Rs.40,000/-. However, Crime No.65 of 2003 was registered against the respondent, which was later taken on file as C.C.No.37 of 2004 by the Judicial Magistrate of First Class, Sircilla, Karimnagar District for the offences under Sections 408 and 381 read with 34 IPC, which is pending. Simultaneously, departmental proceedings were initiated wherein a charge memo was issued on 04.03.2004 and the

respondent submitted his explanation on 31.03.2004. An enquiry officer was appointed on 23.04.2004 and after holding enquiry he submitted his report on 12.06.2004 wherein he held all the charges against the respondent proved.

The respondent specifically stated in his affidavit filed in support of the writ petition that the 2nd appellant (The Karimnagar District Cooperative Central Bank Limited, rep., by its General Manager, Karimnagar) issued a show cause notice dated 28.07.2004 proposing the punishment of dismissal from service and calling for the respondent's explanation. According to the respondent, the General Manager, who issued show cause notice dated 28.07.2004, has no jurisdiction to issue the same. The respondent then filed W.P.No.14514 of 2004 questioning the show cause notice and the said writ petition was disposed of by this Court on 17.08.2004 with a direction to the respondent to submit his explanation to the show cause notice in which the punishment of dismissal from service was proposed. The respondent did not submit his explanation and the order of dismissal was passed by the 1st appellant on 27.09.2004.

Questioning the said order, W.P.No.17982 of 2004 was filed by the respondent and a learned Single Judge of this Court allowed the writ petition with an observation that the said order will not preclude the 1st appellant from issuing a fresh final show cause notice and pass appropriate orders after giving opportunity to the respondent. Feeling aggrieved by the said order, the present writ appeal is filed.

Heard Sri P. Srinivas appearing for Sri P.M.Gopal Rao, learned counsel for appellants 1 and 2 and Sri Vedula Venkataramana, learned counsel for the respondent.

The short ground on which the learned Single Judge has set aside the order of dismissal impugned in the writ petition was that the show cause notice dated 28.07.2004 was issued by the General Manager of the Bank and that he has no jurisdiction to issue such a notice. The learned Single Judge having perused the file, produced by the appellants, observed as under:

> "Though the respondents produced a file to indicate that the first respondent passed the orders on the note file, there was no indication in the show cause notice that the same was issued under the instructions of the first respondent. The first respondent, who signed in the impugned order as a disciplinary authority, ought to have issued the show cause notice by himself or should have instructed the General Manger to mention in the show cause notice that it was issued on the instructions of the disciplinary authority. In the absence of such recital in the show cause notice, it can be concluded that there is violation of the mandatory rule that the disciplinary authority after making up the mind shall issue the final show cause notice. When once there is no show cause notice from the competent authority, the show cause notice issued by the General Manager shall be treated as non est. In the absence of show cause notice by the competent authority, the order of dismissal is nothing, but an order passed by the disciplinary authority without giving sufficient opportunity to the petitioner to express his grievance and to reply to the said notice."

To a query raised by us that whether counter-affidavit was filed in the writ petition on behalf of the appellants, it was submitted by Sri P. Srinivas that as the writ petition was disposed of at the admission stage, the learned Single Judge has perused the file and passed the orders without a counter-affidavit being filed. We have perused the note file pertaining to this case. The note file reveals that after receipt of the enquiry report dated 12.06.2004, the staff of the bank prepared a tabulated statement mentioning in detail the charges framed against each of the delinquents including the respondent, the explanations

submitted by them, their depositions, the findings of the enquiry officer and the remarks of the office staff. On 30.06.2004, an endorsement was made on the note file to the effect "to place it before PIC committee". The note file was therefore placed before the 1st appellant, who was the Chairman of the PIC committee on 04.07.2004 and he made the following endorsement:

> "Agreed with the findings of the E.O. and issue show cause notice to V.N. Chary, R.China Peddanna and V.Ram Reddy by proposing punishment of dismissal from service and reduce (4) increments to P.Narsaiah and issue warning to Vinod Kumar and also place before PIC committee for its information.
>
> Sd/-.
> PIC/Chairman
> 04.07.2004."

Though in the show cause notice dated 28.07.2004 it is not expressly mentioned that the said notice was being issued under the orders of the 1st appellant, the note file produced clearly reveals that the said show cause notice was in fact issued on the directions of the 1st appellant.

The legal issue that arises in this writ appeal is:

Whether the mere omission to mention in the show cause notice that the same was issued on the directions of the 1st appellant itself would vitiate the order of punishment imposed on the respondent?

Sri Vedula Venkataramana, learned counsel for the respondent cited judgments of the Supreme Court in **KHEM CHAND v UNION OF INDIA**[1] and **BACHHITTAR SINGH v STATE OF PUNJAB**[2]. In **Khemchand** (1 supra) it was held that failure of the employer to give an

opportunity as envisaged in proviso to Article 311(2) of the Constitution of India to show cause why the particular punishment should not be inflicted on the employee vitiated the disciplinary proceedings. In **Bachhittar singh** (2 supra) it was held that the departmental enquiry is one continuation proceeding comprising two stages; the first is coming to a conclusion on the evidence as to whether the charges alleged against the Government servants are established or not and the second is reached only if it is found that they are so established. The second stage deals with the action to be taken against the Government servant concerned. Both these stages are equally judicial and consequently any action decided to be taken against a Government servant found guilty of misconduct is a judicial order and as such cannot be valid at the will of the authority, who is empowered to impose the punishment.

It is to be noticed that the aforementioned two judgments were rendered before the 42nd Constitution Amendment Act, 1976 was made. In the said amendment, the proviso to Article 311 (2) under which issuance of a second show cause notice against the action proposed to be taken for dismissal, removal or reduction in rank was mandatory, was substituted by doing away that requirement. Therefore, those two judgments cannot have much relevance in the aftermath of the said 42nd amendment. After the said 42nd Amendment, the only requirement as held in **UNION OF INDIA v RAMZAN KHAN MOHAMMED**[3] is that the delinquent is entitled to be furnished with a copy of the enquiry report to make a representation before a final decision is taken by the employer. As held in **MANAGING DIRECTOR, ECIL, HYDERABAD v KARUNAKAR.B**[4] that mere non-supply of enquiry report does not ipso facto vitiate the disciplinary action unless

the delinquent shows prejudice on account of such non-supply. Therefore, in the light of the law laid down post 42nd Amendment, what is to be seen is whether the employer had given a reasonable opportunity to the delinquent to explain his case with reference to the findings in the enquiry report before a final decision is taken by the employer. In our view once the disciplinary authority applies its mind to the contents of the enquiry report and tentatively decides to inflict punishment on the delinquent and that in pursuance of such a decision, the delinquent is called upon to submit his explanation, it will be wholly irrelevant whether such a notice emanated from the disciplinary authority or a subordinate of the disciplinary authority. If it is revealed from the record that the notice so issued was in fact issued on the directions of the disciplinary authority, mere non-mention of the fact that the notice was issued under the directions of the disciplinary authority would not vitiate the final order passed in the disciplinary proceedings.

We are therefore, in disagreement with the finding of the learned Single Judge that in the absence of a recital in the show cause notice that the same was being issued on the directions of the 1st appellant, it has to be concluded that there is violation of mandatory rule that the disciplinary authority after making up the mind shall issue the final show cause, because, it is the content and not the form in which the show cause notice was issued that is relevant. The true purport of the notice, as already mentioned above, can be ascertained only with reference to what is contained in the note file and as spoken to by the 1st appellant in the counter-affidavit to be filed by him.

It is not in dispute that the General Manager is the executive authority of the bank who is entrusted with the duties of carrying out the

directions of the management. In our view, the show cause notice is required to be considered in the light of the endorsements in the note file. In the ordinary course, we would have ourselves decided the appeal on merits, but we refrain from doing so for the reason that a counter-affidavit, which is very much essential for the adjudication of the issue raised in the writ petition, was not filed and the writ petition was disposed of without such a counter-affidavit. We are of the opinion that if the 1st appellant has applied his mind to the enquiry report and the General Manager has merely issued the show cause following the decision taken by the 1st appellant to issue such a show cause notice, no interference is called for by this Court. For determination of the issue as to whether there was application of mind by the 1st appellant, it is very much necessary for the 1st appellant to file a counter-affidavit indicating his stand. This course would also give an opportunity to the respondent to meet such a stand that may be taken by the 1st appellant, to present his case before the learned Single Judge. If it is established that the show cause notice was issued on the directions of the 1st appellant, it has necessarily to be construed that the General Manager, in issuing the show cause notice was merely carrying out the directions of the 1st appellant and that such a show cause notice is deemed to have been issued on behalf of the 1st appellant though it is not specifically mentioned in the show cause notice.

For the aforementioned reasons, we set aside the order of the learned Single Judge and remit the writ petition to the learned Single Judge for deciding the issue afresh. If, after hearing of the case, the learned Single Judge is satisfied that the issuance of the show cause notice dated 28.07.2004 by the General Manager was preceded by

application of mind by the 1st appellant and the show cause notice was issued in pursuance of his directions, no interference is warranted with the order impugned in the writ petition.

Accordingly, the writ appeal is allowed. No costs.

B. PRAKASH RAO, J

Dated: .11.2006

C.V. NAGARJUNA REDDY, J

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[1] AIR 1958 SC 300

[2] AIR 1963 SC 395

[3] (1991) 1 SCC 588

[4] 1993 (4) SCC 727